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21 UNITED STATES DISTRICT COURT  
22 EASTERN DISTRICT OF WASHINGTON

23 JOHN STOCKTON, RICHARD  
24 EGGLESTON, M.D., THOMAS T. SILER,  
25 M.D., DANIEL MOYNIHAN, M.D.,  
26 CHILDREN'S HEALTH DEFENSE, a not-  
27 for-profit corporation, AND JOHN AND  
28 JANE DOES, M.Ds 1-50,  
Plaintiffs,

v.

ROBERT FERGUSON, Attorney General  
of the State of Washington, AND KYLE S.  
KARINEN, Executive Director of the  
Washington Medical Commission,  
Defendants.

Case No: \_\_\_\_\_

**COMPLAINT FOR INJUNCTIVE  
AND DECLARATORY RELIEF  
UNDER 42 U.S.C. SECTION 1983**

1 Plaintiffs by their undersigned counsel allege against the Defendants as follows:

2 **JURISDICTION AND VENUE**

3 **1.** This is a 42 U.S.C. section 1983 civil rights action for which this Court has  
4 federal question jurisdiction under 28 U.S.C. section 1331. This Court has authority to  
5 grant the requested injunctive relief under 28 U.S.C. section 1343; the requested  
6 declaratory relief under 28 U.S.C. sections 2201 and 2202; and costs and attorneys' fees  
7 under 42 U.S.C. section 1988 (b).

8 **2.** Venue is proper in the federal Eastern District of Washington pursuant to  
9 28 U.S.C. section 1391 (b) (2). Plaintiffs, John Stockton and Richard Eggleston, M.D.  
10 live in this district and as such, the First Amendment free speech restrictions and injury  
11 complained of in this lawsuit occurred in this District.

12 **INTRODUCTION AND SUMMARY OF ACTION**

13 **3.** Since declaring that it would sanction physicians who speak out against the  
14 mainstream Covid narrative in September 2021, the Washington Medical Commission  
15 ("Commission") has investigated, prosecuted and/or sanctioned approximately 60  
16 physicians. These cases are at least in part based on what in First Amendment parlance  
17 is called pure or soapbox speech, meaning written or verbal communications to the  
18 public (as opposed to a physician's communications to an individual patient as part of a  
19 doctor/patient interaction).

20 **4.** There is no place for the government, under the guise of regulating  
21 physicians and protecting the public, to censure, restrict or sanction the content and  
22 viewpoint of the publicly expressed views of physicians on Covid or any other subject,  
23 just because the government does not like the message or thinks it is wrong.

24 **5.** Going back seventy-years, every judge and Supreme Court justice who has  
25 written on professional soapbox speech has stated that it is fully protected by the First  
26 Amendment and/or said that it cannot be the subject of government regulation or  
27  
28

1 restriction.<sup>1</sup> Further, the public’s protected First Amendment right to receive  
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5 <sup>1</sup> “Where the personal nexus between professional and client does not exist, and the  
6 speaker does not purport to be exercising judgment on behalf of any particular  
7 individual with whose circumstances he is directly acquainted, government regulation  
8 ceases to function as legitimate regulation of professional practice with only incidental  
9 impact on speech; it becomes regulation of speaking or publishing as such, subject to  
10 the First Amendment’s command that ‘Congress shall make no law... abridging the  
11 freedom of speech, or the press.’” *Lowe v. SEC*, 472 U.S. 181, 232 (1985) (Justice  
12 White’s concurring opinion), citing and restating Justice Jackson’s concurring opinion  
13 in *Thomas v. Collins*, 323 U.S. 516, 545-46 (1945). “[I]t is not the right, of the state to  
14 protect the public against false doctrine. The very purpose of the First Amendment is to  
15 foreclose public authority from assuming a guardianship of the public mind through  
16 regulating the press, speech, and religion. In this field every person must be his own  
17 watchman for truth, because the forefathers did not trust any government to separate the  
18 true from the false for us. (citation omitted) Nor would I. Very many are the interests  
19 which the state may protect against the practice of an occupation, very few are those it  
20 may assume to protect against the practice of propagandizing by speech or press. These  
21 are thereby left great range of freedom. \* \* \*This liberty was not protected because the  
22 forefathers expected its use would always be agreeable to those in authority or that its  
23 exercise always would be wise, temperate, or useful to society. As I read their  
24 intentions, this liberty was protected because they knew of no other way by which free  
25 men could conduct representative democracy.” Both of which opinions were cited with  
26 approval (among other authorities for the same principle) in *Pickup v. Brown*, 740 F.3d  
27 1208, 1227 (9th Cir. 2014) *abrogated on other grounds* by *Nat’l Inst. of Family & Life*  
28 *Advocates v. Becerra*, 138 S. Ct. 2361 (2018) (“*NIFLA*”).

1 information is equally firmly affixed in the Constitutional firmament.<sup>2</sup>

2       **6.**       The purpose of this lawsuit is to protect the right of physicians to speak,  
3 and the right of the public to hear their message. The goal is to stop the Commission  
4 from investigating, prosecuting or sanctioning physicians who speak out in public  
5 against the so-called “mainstream Covid narrative,” i.e., the succession of public health  
6 edicts put out by the CDC and repeated by the primary news outlets, which has caused  
7 the public to lose trust in the public health authorities, which has caused the CDC to  
8 repeatedly apologize and promise to do better.<sup>3</sup>

9 \_\_\_\_\_  
10 <sup>2</sup>       “It is well established that the right to hear — the right to receive information —  
11 is no less protected by the First Amendment than the right to speak. (citations omitted)  
12 Indeed, the right to hear and the right to speak are flip sides of the same coin. As Justice  
13 Brennan put it pithily, “It would be a barren marketplace of ideas that had only sellers  
14 and no buyers.” *Conant v. Walters*, 309 F.3d 629, 643 (9th Cir. 2002).

15 <sup>3</sup>       *See, e.g.,* Nicholas Florko, *Public trust in CDC, Fauci, and other top health*  
16 *officials is evaporating, poll finds*, STATNEWS.COM (Sept. 10, 2020),  
17 <https://www.statnews.com/2020/09/10/trust-cdc-fauci-evaporating/> [Redfield]; Selena  
18 Simmons-Duffin, *Poll Finds Public Health Has A Trust Problem*, NPR.ORG, health (May  
19 13, 2021), [https://www.npr.org/2021/05/13/996331692/poll-finds-public-health-has-a-](https://www.npr.org/2021/05/13/996331692/poll-finds-public-health-has-a-trust-problem)  
20 [trust-problem](https://www.npr.org/2021/05/13/996331692/poll-finds-public-health-has-a-trust-problem) [Walensky]; *The CDC is beholden to corporations and lost our trust. We*  
21 *need to start our own The People's CDC*, THEGUARDIAN.COM, opinion (Apr. 3, 2022),  
22 <https://www.theguardian.com/commentisfree/2022/apr/03/peoples-cdc-covid-guidelines>  
23 [Walensky]; *How to Make the CDC Matter Again*, BLOOMBERG.COM, Opinion (May 2,  
24 2022) [https://www.bloomberg.com/opinion/articles/2022-05-02/the-cdc-needs-reform-](https://www.bloomberg.com/opinion/articles/2022-05-02/the-cdc-needs-reform-to-restore-public-trust-after-covid-19#xj4y7vzkg)  
25 [to-restore-public-trust-after-covid-19#xj4y7vzkg](https://www.bloomberg.com/opinion/articles/2022-05-02/the-cdc-needs-reform-to-restore-public-trust-after-covid-19#xj4y7vzkg) [Walensky]; Randy Aldridge, *CDC*  
26 *Announces Sweeping Changes to Restore Public Trust*, NORTH CAROLINA MEDICAL  
27 SOCIETY (Aug. 18, 2022), [https://ncmedsoc.org/cdc-announces-sweeping-changes-to-](https://ncmedsoc.org/cdc-announces-sweeping-changes-to-restore-public-trust)  
28 [restore-public-trust](https://ncmedsoc.org/cdc-announces-sweeping-changes-to-restore-public-trust) [Walensky]; Tina Reed, *Survey finds concern of political influence*



1 individuals to make their own health and medical decisions, and sports.<sup>4</sup>

2       **10.** Plaintiff Stockton sues on his own behalf and advocates for all  
3 Washingtonians who share his belief that people have the First Amendment right to hear  
4 the public soapbox speech of Washington licensed physicians who disagree with the  
5 mainstream Covid narrative. The actions of the Defendants directly impinge on that  
6 right because, upon information and belief, one of the purposes of the Commission's  
7 prosecution of physicians for offering public opinions that are not in harmony with the  
8 Commission's approved messaging is to silence dissent.

9       **11.** Plaintiff Richard Eggleston, M.D. is a retired ophthalmologist who resides  
10 in this district in Clarkston, Washington. He is currently the subject of a Medical  
11 Commission administrative proceeding. He has been active in trying to assert his  
12 Constitutional rights: He was a plaintiff in a case in this district captioned *Wilkinson v.*  
13 *Ferguson*. He is also the plaintiff in an action captioned *Eggleston v. Washington*  
14 *Medical Commission* which is a Washington State constitutional challenge to the  
15 Commission's prosecution against him. (Described in more detail on page 12, footnote  
16 8.)

17       **12.** Plaintiff Eggleston sues as a licensed physician currently being prosecuted  
18 by the Commission for the public dissemination of information contrary to the  
19 government approved Covid narrative. However, he also sues and has standing to sue as  
20 a Washington resident whose right to hear information from other Washington licensed  
21 physicians is being chilled and censored by the Defendants' actions.

22       **13.** Plaintiff Thomas T. Siler, M.D. is a retired physician who is the subject of  
23 \_\_\_\_\_

24 <sup>4</sup> Plaintiff Stockton was a well-regarded Gonzaga basketball player, and followed  
25 that up with a 19-year NBA career as a point guard. He was elected to the Hall of Fame  
26 twice (once as an individual player and as part of the two Olympic Dream Teams).  
27 Although he retired more than 20 years ago, many of his NBA records still stand,  
28 including the most season assists and steals.

1 a Commission prosecution based on several posts which appeared on the internet in  
 2 which he challenged aspects of the approved government Covid narrative, as described  
 3 more fully *infra*. Dr. Siler sues as a physician under attack by the Defendants for  
 4 expressing his protected First Amendment speech to the public. And like Plaintiff  
 5 Eggleston, he also sues as a member of the public whose First Amendment right to hear  
 6 the views of other Washington licensed physicians is being chilled by the Defendants'  
 7 actions.

8 **14.** Plaintiff Daniel Moynihan, M.D. is a licensed, retired board-certified  
 9 Family Medicine physician who resides in southwest Washington. He is a volunteer for  
 10 Plaintiff Children's Heath Defense, Washington Chapter. He is not currently being  
 11 prosecuted for speaking out in public against the mainstream Covid narrative. However,  
 12 the actions by the Commission chill his willingness to speak out in public on Covid and  
 13 against the Commission-sanctioned narrative. Further, because of Defendants'  
 14 prosecution of other physicians, his access to information about Covid from  
 15 knowledgeable Washington licensed physicians is being infringed.

16 **15.** Plaintiffs John and Jane Does, MD are the other Washington licensed  
 17 physicians who are currently the subject of Commission investigations and prosecutions  
 18 in whole or in part based on their speaking out in public against the Commission-  
 19 approved Covid narrative. Their names are unknown to Plaintiffs' counsel, but are  
 20 known to the Defendants and discoverable or contactable pursuant to an appropriate  
 21 court order.<sup>5</sup>

22 \_\_\_\_\_  
 23 <sup>5</sup> Two caveats or limitations to the inclusion of the John and Jane Doe MDs should  
 24 be noted. First, these plaintiffs do not include any physician against whom the  
 25 Defendants have obtained a final order of discipline which has either not been appealed  
 26 or for which the appeal has resolved or terminated. Second, for John and Jane Doe  
 27 physicians whose statement of charges allege other professional misconduct (beyond the  
 28 First Amendment issues raised in this case), Plaintiffs seek no relief regarding such



1           **16.** Plaintiff Children’s Health Defense (“CHD”) is a 501(c)(3) non-profit  
2 corporation whose mission is to end childhood health epidemics by working  
3 aggressively to eliminate harmful exposures, hold those responsible accountable, and to  
4 establish safeguards to prevent future harm. Its mission also includes advocating for  
5 medical freedom, bodily autonomy, and an individual’s right to receive the best  
6 information available based on a physician’s best judgment.

7           **17.** Among other things, CHD educates the public concerning the negative  
8 risk-benefit profile of the Covid shots for healthy children, which concerns have caused  
9 some countries (which have had the best pandemic response outcomes) to stop  
10 recommending Covid vaccination or boosters, or both, for healthy children (*see* recent  
11 recommendations of Denmark, Sweden, the UK, and the European Medicines Agency.  
12 *See, e.g.,* Leonhardt, D. (February 13, 2024). *Covid Shots for Children. Much of the*  
13 *world has decided that most young children don’t need to receive Covid booster shots.*  
14 *The U.S. is an outlier,* [https://www.nytimes.com/2024/02/13/briefing/covid-boosters-](https://www.nytimes.com/2024/02/13/briefing/covid-boosters-children-cdc.html)  
15 [children-cdc.html](https://www.nytimes.com/2024/02/13/briefing/covid-boosters-children-cdc.html).

16           **18.** CHD has a Washington chapter and it and CHD national have members  
17 and volunteers including Washington licensed physician Plaintiff Daniel Moynihan,  
18 MD who wish to speak out about in public about the latest studies about the Covid  
19 booster shots, as well as information about the off-label treatments for Covid. Among  
20 their members are Washington parents who want to receive objective, non-coerced  
21 information from physicians, including Washington licensed physicians about the risk  
22 profile of the Covid vaccines for the current boosters. CHD has approximately 2,000  
23 \_\_\_\_\_

24 other conduct, and this lawsuit does not impact the continued prosecution of these  
25 plaintiffs on matters unrelated to the First Amendment based charges. Upon information  
26 and belief, most of the Commission’s cases fall in this category. The latest information  
27 Plaintiffs have is as of early to mid-2023, that there were approximately 60 prosecutions  
28 which contained a charge of Covid misinformation to the public.



1 members who live in the state of Washington.

2       **19.** Upon information and belief, the Commission's actions in prosecuting  
3 physicians for speaking out against the mainstream Covid narrative has a chilling effect  
4 and will dissuade many physicians from providing their candid opinions, which creates  
5 a risk of self-censorship significantly impairing the ability of CHD physicians to  
6 provide such information, which will militate against CHD lay members in Washington  
7 from receiving such nonconforming opinions from their physicians. An actual and  
8 justiciable controversy exists therefore between Plaintiff CHD and Defendants.

9       **20.** In addition, CHD Washington chapter is actively involved in protecting  
10 the rights of physicians to speak out against the approved Covid narrative. It has weekly  
11 meetings and interfaces with physicians under attack and their attorneys. It supports  
12 efforts to disseminate information which is not consistent with, not highlighted or  
13 suppressed by the medical authorities.<sup>6</sup> In addition, the Washington chapter acts as a  
14 clearing house for information and activities about the Commission which impact  
15 Washington residents who share the same outlook as CHD and its members.

16       **21.** Plaintiff CHD and its Washington chapter (which is not a separate legal  
17 entity) sue in its own capacity and on behalf of its constituent members residing in  
18 Washington who have been and will continue to be adversely affected by Defendants'  
19 actions.

20       **22.** CHD members would have standing to sue. The interests which CHD seeks  
21 to protect are germane to and go to the heart of CHD's purpose. Neither the claims  
22 asserted nor the relief requested requires the participation of CHD's individual members  
23 in this lawsuit.

24       **23.** To the best of CHD's knowledge, none of its Washington physician  
25

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26 <sup>6</sup> See, e.g., Children's Health Defense: Washington Chapter (January 26, 2024).  
27 *Vax Injury Recovery Protocols: A Success Story*. [https://wa.childrenshealthdefense.org/  
28 an-informed-life-radio/vax-injury-recovery-protocols-a-success-story/](https://wa.childrenshealthdefense.org/an-informed-life-radio/vax-injury-recovery-protocols-a-success-story/).

1 members are subject to investigation or prosecution by the Defendants for Covid  
2 misinformation to the public.

3 **24.** Defendant Robert Ferguson is the Washington Attorney General. His office  
4 and his staff attorneys represent the Commission in prosecuting physicians in  
5 disciplinary cases. As such, the Defendant can effectuate any injunction sought and  
6 issued in this action. No compensatory damages are being sought from the Defendant,  
7 individually or in his official capacity.

8 **25.** Kyle S. Karinen is the Commission's executive director and oversees its  
9 administrative staff, including the staff which investigates and charges physicians with  
10 misconduct. As such, the Defendant has the legal authority to effectuate an injunction  
11 sought and issued by this Court. No compensatory damages are being sought from this  
12 Defendant individually or in his official capacity.

### 13 **FACTUAL BACKGROUND**

#### 14 **Origins of The Nationwide and Washington Covid Misinformation** 15 **Disciplinary Campaign**

16 **26.** By press release dated July 21, 2021, the Federation of State Medical  
17 Boards (the "Federation")<sup>7</sup> issued the following press release:

18 Physicians who generate and spread COVID-19 vaccine misinformation or  
19 disinformation are risking disciplinary action by state medical boards,  
20 including the suspension or revocation of their medical license. Due to the  
21 specialized knowledge and training, licensed physicians possess a high

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22 <sup>7</sup> According to its website, "The Federation of State Medical Boards represents the  
23 state medical and osteopathic regulatory boards – commonly referred to as state medical  
24 boards – within the United States, its territories and the District of Columbia. It supports  
25 its member boards as they fulfill their mandate of protecting the public's health, safety  
26 and welfare through the proper licensing, disciplining, and regulation of physicians and,  
27 in most jurisdictions, other health care professionals." *About FSMB*, FEDERATION OF  
28 STATE MEDICAL BOARDS, <https://www.fsmb.org/about-fsmb/>.

degree of public trust and therefore have a powerful platform in society, whether they recognize it or not. They also have an ethical and professional responsibility to practice medicine in the best interests of their patients and must share information that is factually, scientifically grounded and consensus driven for the betterment of public health. Spreading inaccurate COVID-19 vaccine information contradicts that responsibility, threatens to further erode public trust in the medical profession and thus puts all patients at risk.

*FSMB: Spreading Covid-19 Vaccine Misinformation May Put Medical License At Risk*, FEDERATION OF STATE MEDICAL BOARDS, News Releases (Jul. 29, 2021), <https://www.fsmb.org/advocacy/news-releases/fsmb-spreading-covid-19-vaccine-misinformation-may-put-medical-license-at-risk/>.

27. The Federation's press release was not accompanied by any kind of white paper or legal analysis which opined that a medical board could constitutionally sanction a licensee for speaking out in public on a matter of public importance, perhaps because for seventy-five years, justices of the Supreme Court and lower court judges, including in this federal circuit, have stated that such action by professional boards are unconstitutional. (*See* footnote 1 on page 3 *supra*.)

28. On September 22, 2021, the Commission voted to adopt a guidance policy similar but broader than the Federation's press release, suggesting that the Commission could discipline physicians for public information beyond the Covid 19 vaccines. That policy is still in effect as of the date of the filing of this action. *COVID-19 Misinformation*, WASHINGTON MEDICAL COMMISSION, <https://wmc.wa.gov/sites/default/files/public/COVID-19/COVID-19%20Misinformation%20Position%20Statement.pdf> (last accessed 3/6/24).

### **The Commission's Prosecution of Plaintiffs Eggleston and Siler**

#### *Plaintiff Eggleston case:*

29. Plaintiff Richard Eggleston was a board-certified ophthalmologist until his retirement more than 10 years ago, but still maintains his Washington medical license.

30. In January 2021, Plaintiff entered a four-year contract with the *Lewiston*

1 *Tribune* to provide a conservative-oriented monthly opinion column, for the nominal  
 2 sum of \$10.00 per column. Plaintiff writes on a variety subjects. However, in 2021  
 3 most of his columns dealt with Covid and the Government's response to the pandemic.  
 4 Plaintiff Eggleston opposes Covid mandates, believes, and opines that the risk benefit  
 5 profile is unfavorable for some subsets of the population. He advocated in favor of off-  
 6 label treatments such as Ivermectin, and against the lockdowns. In his columns, he often  
 7 cites government statistics and given his take or opinions on the meaning of those  
 8 statistics. His opinions are at odds with what is published in the mainstream media.

9 **31.** In fact, it was the purpose and objective of the publisher of the paper for  
 10 Plaintiff to express his more conservative viewpoint to the paper's readership.

11 **32.** In or about late 2021, the Commission commenced an investigation  
 12 concerning his opinion pieces and asked him to explain his views. He did so and related  
 13 other of his opinions about the pandemic.

14 **33.** On August 4, 2022, the Commission charged Plaintiff with professional  
 15 misconduct based on his opinion pieces published in the *Lewiston Tribune*, on the stated  
 16 grounds that they constitute a violation of RCW 18.130. 180 (1) as an act of "moral  
 17 turpitude, dishonesty, or corruption relating to the person's profession...." (13)  
 18 Misrepresentation or fraud in any aspect of the conduct of the business of profession."  
 19 and (18) "interference with an investigation or disciplinary proceeding by willful  
 20 misrepresentation of facts before the disciplinary authority or its authorized  
 21 representations...." The latter charge is based on Plaintiff's statements that he made in  
 22 response to the Commission's request that he provide a response and justification for the  
 23 positions he took in his opinion articles.<sup>8</sup>

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24  
 25 <sup>8</sup> The Commission's hearing was scheduled to commence on May 23, 2023.  
 26 However, after an Asotin County superior court denied Eggleston's motion for a  
 27 preliminary injunction (*Eggleston v. Washington Medical Commission*, 23-0006902), a  
 28 state appellate court commissioner stayed the hearing pending determination of the

1           **34.** By mutual agreement with the publisher of the *Lewiston Tribune*, after the  
 2 Commission filed its statement of charges against him, Dr. Eggleston changed the  
 3 manner of his writing about Covid. *See, e.g.*, his opinion pieces from January 2021,  
 4 until February 2024:

5 [https://www.lmtribune.com/search/?f=html&q=richard+eggleston&s=start\\_time&sd=de](https://www.lmtribune.com/search/?f=html&q=richard+eggleston&s=start_time&sd=desc&l=25&t=article%2Ccollection%2Cvideo%2Cyoutube&nsa=eedition)  
 6 [sc&l=25&t=article%2Ccollection%2Cvideo%2Cyoutube&nsa=eedition](https://www.lmtribune.com/search/?f=html&q=richard+eggleston&s=start_time&sd=desc&l=25&t=article%2Ccollection%2Cvideo%2Cyoutube&nsa=eedition).

7           **35.** The Commission’s prosecution of him for the content and viewpoint of his  
 8 opinion pieces has thus directly and irreparably injured his First Amendment free  
 9 speech rights, as well as the First Amendment rights of the other Plaintiffs and all  
 10 Washington residents who may want, but no longer have access to Plaintiff Eggleston’s  
 11 information and opinions on Covid health policy, the safety and efficacy of off-label  
 12 drugs, as well as the harm caused by lockdowns.

13                   *Plaintiff Siler’s Case:*

14           **36.** Plaintiff Thomas T. Siler M.D. is a retired Washington physician.<sup>9</sup> From  
 15 February to October 2021, he wrote a series of posts in AmericanThinker.com, which is  
 16 self-described as a “community for the civil and thoughtful discussion of issues. AT is

17 \_\_\_\_\_  
 18 appealability of the superior court’s denial of a preliminary injunction to enjoin the  
 19 hearing. However, the case is being returned to the Superior Court after the appellate  
 20 court panel overturned the appellate court commissioner’s determination that the case  
 21 was amenable to discretionary review. (*Eggleston v. WMC*, Cause No. 397319). As of  
 22 the date of the filing of this complaint, the state court action is pending. However, the  
 23 state court case only contains a claim for relief under the Washington state  
 24 Constitution’s Free Speech clause.

25 <sup>9</sup> Dr. Siler had been board certified in internal medicine for several decades.  
 26 However, his board certification was removed for Covid misinformation by the private  
 27 certifying American Board of Internal Medicine, whose actions are not constrained by  
 28 the First Amendment as the Defendants actions are.





1 law... abridging the freedom of speech." The First Amendment applies to actions by  
2 state agencies such as the Boards via the Fourteenth Amendment.

3 **42.** The individual physician plaintiffs and the Washington licensed physician  
4 members of organizational Plaintiffs CHD (including its Washington chapter), have a  
5 First Amendment right to express their views and criticisms of the mainstream Covid  
6 narrative to the public.

7 **43.** Plaintiff John Stockton, lay members of CHD and all Washington residents  
8 have the First Amendment right to hear the views of the three individually named  
9 physician plaintiffs, as well as any Washington licensed physician, even if the viewpoint  
10 is not consistent the with public health authorities' and the Commission's views on the  
11 safety and efficacy of the Covid shots, the use of off-label treatments for Covid and the  
12 efficacy of masking, or other Covid related topics.

13 **44.** The Defendants' investigation, prosecution, and sanctioning of physicians  
14 disseminating for so-called "Covid misinformation" to the public via the  
15 guise/pretext/transformation of protected speech into professional acts of moral  
16 turpitude, fraud or misrepresentation violates the First Amendment rights of physicians.

17 **45.** The Commission's tactic of transforming protected speech into medical  
18 board regulatable professional conduct is simply the latest iteration of the "professional  
19 speech doctrine" which has been rejected by the Supreme Court in *Nat'l Inst. Advocates*  
20 *& Life Advocates v. Becerra* ("NIFLA") 138 S. Ct. 2361, 2371-2373 (2018).

21 **46.** The Defendants' actions also violate the rights of all Plaintiffs to receive  
22 this First Amendment protected information.

23 **47.** The alleged First Amendment violations are subject to the Court's strict  
24 scrutiny because they are both content and viewpoint based. Assuming, arguendo, (if  
25 not counterfactually), there had been a compelling state interest to restrict physician  
26 soapbox speech, that compelling interest expired with the declared the end of the  
27 pandemic and the termination of the emergency status by the states.



1           **48.** Further, there is no evidence that Defendant Commission considered and  
2 rejected other less invasive methods to achieve its stated goal of protecting the public.

3           **49.** Based on the foregoing, the actions of the Defendants complained of herein  
4 violate the Plaintiffs' First Amendment rights which justifies declaratory and injunctive  
5 relief.

6  
7                                   **SECOND CLAIM FOR RELIEF**

8                   **ALL PLAINTIFFS REQUEST FOR A DECLARATORY JUDGMENT**  
9                   **THAT RCW 18.130. 180 (1) AND (13) ARE FACIALLY**  
10                  **UNCONSTITUTIONALLY OVERBROAD AND SUBJECT TO**  
11                  **INJUNCTIVE RELIEF**

12           **50.** Plaintiffs repeat and reallege the foregoing allegations.

13           **51.** The Defendants claim to have the statutory authority to reach Plaintiffs'  
14 (and all the Commission's licensees') pure/soapbox speech based on RCW 18.130. 180  
15 (1) which provides it jurisdiction over an act of "moral turpitude, dishonesty, or  
16 corruption relating to the person's profession..." and (13) "Misrepresentation or fraud  
17 in any aspect of the conduct of the business or profession." Meaning that a licensee's  
18 expressing opinions about Covid, or asserting facts which the Commission decides are  
19 untrue is an act of moral turpitude, dishonesty, corruption, or fraud in the conduct of the  
20 business or profession.

21           **52.** Defendants' interpretation of RCW 18.130. 180 is unconstitutionally  
22 overbroad insofar as it reaches fully protected speech which is either a *per se* violation  
23 of the First Amendment or fails strict scrutiny. Plaintiffs seek a declaratory judgment  
24 and a preliminary and permanent injunction based on overbreadth principles in that the  
25 Defendants are unconstitutionally regulating fully protected speech which renders the  
26 purported statutory justification facially unconstitutional.

**THIRD CLAIM FOR RELIEF**

**PLAINTIFFS EGGLESTON, SILER, AND MOYNIHAN REQUEST FOR A DECLARATORY JUDGEMENT THAT THE COMMISSION'S INTERPRETATION OF ITS LAWS (RCW 7.24.146, 34.05 ET SEC AND WAC 246-11-480) VIOLATE THEIR FIFTH AND FOURTEENTH AMENDMENT DUE PROCESS RIGHTS AND REQUEST FOR INJUNCTIVE RELIEF**

**53.** Plaintiffs Eggleston, Siler and Moynihan repeat and reallege the foregoing allegations.

**54.** Based on the litigation in *Eggleston v. Washington Medical Commission*, (“WMC”) Defendants assert that under Washington law, there is no pre-administrative hearing recourse to remedy the Commission’s alleged violation of the physicians’ free speech rights.

**55.** Specifically, Defendants argue that 1. Washington law does not permit a respondent in an administrative proceeding to file a declaratory judgment action under RCW 7.24.145, during the pendency of a Medical Commission administrative proceeding, 2. An administrative law judge in an RCW 34.05 *et. seq.* hearing does not have the statutory authority to rule on the constitutionality of an administrative agency’s action under WAC 246-11-480 (4), and 3. The only recourse a physician has is to raise a constitutional claim after the administrative action is final and in an appeal in a superior court, notwithstanding the fact that Washington law provides an exception to the failure to exhaust administrative remedies per RCW 34.05. 534 (c)(1)-(3).

**56.** Assuming *arguendo* that the Defendants’ interpretation of the above statutes and regulation is correct, those laws and rule violate the federal procedural and substantive due process rights of Plaintiffs Eggleston, Siler, Moynihan, and all Washington physicians.

**57.** Plaintiffs’ First Amendment rights of free soapbox speech is a fundamental right. Free speech jurisprudence holds that the government’s likely violation of First

1 Amendment rights constitutes irreparable injury, even for a short period of time, and is  
 2 curable via a federal court preliminary injunction. *Elrod v. Burns*, 427 U.S. 347, 373  
 3 (1976); *S.O.C., Inc. v. County of Clark*, 152 F.3d. 1136, 1148 (9th Cir. 1998).

4 **58.** State preliminary injunction jurisprudence (*Beauregard v. Wash. State Bar*  
 5 *Ass'n*, 197 Wash.2d 67, 72, 480 P.3d 410, 414 (Wash. 2021) does not recognize, and in  
 6 fact is inconsistent with the expeditious hearing and cessation of likely governmental  
 7 First Amendment violations as established by *Elrod* and other federal cases.<sup>10</sup>

8 **59.** First Amendment substantive rights and the process for protecting those  
 9 rights allow and indeed require that upon the requisite showing of a First Amendment  
 10 violation, the government infringement should be immediately enjoined pending a final  
 11 decision on the merits.

12 **60.** The state is not free to continue to violate Plaintiff physicians' fundamental  
 13 rights by requiring the physician to justify his/her protected speech in a state  
 14 administrative proceeding, thereby delaying the vindication of these rights until after the  
 15 state has adjudicated what it has no right to judge.<sup>11</sup>

16 **61.** Accordingly, the state court statutes and state preliminary injunction  
 17 requirements violate procedural and substantive due process. The Defendants' actions  
 18 also run afoul of the spirit if not the letter of pre-administrative hearing access to the  
 19 courts which raise fundamental constitutional issues, per *Axon Enterprises v. FTC*, 143  
 20

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21  
 22 <sup>10</sup> "A party seeking preliminary injunctive relief must establish (1) a clear legal or  
 23 equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) that  
 24 the acts complained of either have or will result in actual and substantial injury.  
 25 (Citations omitted.)" *Beauregard v. Wash. State Bar Ass'n*, 197 Wash.2d at 72, 480 P.3d  
 26 at 414 (Wash. 2021).

27 <sup>11</sup> Pure speech does not lose its protection based on the allegation that it is false or  
 28 misleading or even if it is false. *United States v. Alvarez*, 567 U.S. 709 (2012).

1 S. Ct. 890 (2023).<sup>12</sup>

2 **62.** The individual physician plaintiffs seek declaratory relief, as well as  
3 preliminary and permanent injunctive relief based on the state law and state actions  
4 which violate the substantive and procedural due process rights of these Plaintiffs.  
5

## 6 **REQUEST FOR RELIEF**

7 WHEREFORE Plaintiffs seek judgment as follows:

8 1. A declaration that the Defendants' investigation, prosecution, and  
9 sanctioning Washington physicians based on the physician's public/soapbox  
10 speech about the subject and viewpoint concerning Covid which is not consistent  
11 with the approved Covid narrative violates the First Amendment free speech rights  
12 of physicians and their listeners, and is unconstitutionally overbroad as set forth in  
13 the First and Second Claims for Relief.

14 2. A preliminary and permanent injunction against the Defendants from  
15 \_\_\_\_\_

16 <sup>12</sup> The *Axon* decision addressed the same basic problem as in this claim, namely the  
17 adjudication of a fundamental claim against an agency that only provides for  
18 consideration of that claim after the conclusion of the administrative process.

19 “And—here is the rub—it is impossible to remedy once the proceeding is over, which is  
20 when appellate review kicks in. Suppose a court of appeals agrees with Axon, on review of  
21 an adverse FTC decision, that ALJ-led proceedings violate the separation of powers. The  
22 court could of course vacate the FTC's order. But Axon's separation-of-powers claim is not  
23 about that order; indeed, Axon would have the same claim had it won before the agency.  
24 The claim, again, is about subjection to an illegitimate proceeding, led by an illegitimate  
25 decisionmaker. And as to that grievance, the court of appeals can do nothing: A proceeding  
26 that has already happened cannot be undone. Judicial review of Axon's (and Cochran's)  
27 structural constitutional claims would come too late to be meaningful.”

28 *Id.* at 903-04.

1 initiating or continuing any investigation or prosecution of any Washington  
2 licensed physician, based on the written or verbal communications by physicians to  
3 the public, based on the First and Second Claims for Relief.

4 3. A declaration that the Defendants' interpretation of the Commission's  
5 statutes violates the substantive and procedural due process rights of Washington  
6 licensed physicians, and preliminary and permanent injunctive relief.

7 4. Attorneys' fees as allowed by law, and such other and further relief as  
8 the Court deems just and proper.

9  
10 Dated: March 7, 2024

11 Respectfully submitted,

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